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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL W. HILLIS and BRAN FERREN

Appeal 2009-007453
Application 10/735,400
Technology Center 3700

Before JOSEPH L. DIXON, LANCE LEONARD BARRY, and
JAY P. LUCAS, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

The Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 1-20. We have jurisdiction under 35 U.S.C. § 6(b).
We Affirm.

I. STATEMENT OF THE CASE

The Invention

The invention at issue on appeal relates to a method and apparatus for collectively operating and controlling a plurality of controllers for one or more on-screen entity (Spec. 3).

The Illustrative Claim

Claim 1, an illustrative claim, reads as follows:

1. A video game controller hub, comprising:

means for receiving a plurality of control input sets from a corresponding plurality of video game controllers, each of said control input sets comprising a plurality of control inputs;

means for reducing said control input sets to at least one reduced control input set according to a reduction scheme; and

means for providing said at least one reduced control input set to a video game console;

wherein each reduced control input set determines an action of a separate on-screen entity; and

wherein said video game controllers collectively control at least one on-screen entity.

The References

The Examiner relies on the following references as evidence:

Stiles Jr.	US 5,404,305	Apr. 4, 1995
Tanaka	US 2002/0072410 A1	Jun. 13, 2002

The Rejections

The following rejections are before us for review:

Claims 1-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Stiles and Tanaka.

Only those arguments actually made by the Appellants have been considered in this decision. Arguments which the Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2008).

II. ISSUE

Has the Examiner erred in finding that the combination of Stiles and Tanaka teaches or fairly suggests “means for providing said at least one reduced control input set to a video game console” and “said video game controllers collectively control at least one on-screen entity”, as recited in claim 1?

III. PRINCIPLES OF LAW

Scope of Claim

During prosecution before the USPTO, claims are to be given their broadest reasonable interpretation, and the scope of a claim cannot be narrowed by reading disclosed limitations into the claim. *See In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). The Office must apply the broadest reasonable meaning to the claim language, taking into account any definitions presented in the specification. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (citing *In re Bass*, 314 F.3d 575, 577 (Fed. Cir. 2002)).

“Giving claims their broadest reasonable construction ‘serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.’” *Id.* (quoting *In re Yamamoto*, 740 F.2d 1569, 1571 (Fed. Cir. 1984)). “Construing claims broadly during prosecution is not unfair to the applicant . . . because the applicant has the opportunity to amend the claims to obtain more precise claim coverage.” *Id.*

The PTO's construction here, though certainly broad, is unreasonably broad. The broadest construction rubric coupled with the term “comprising” does not give the PTO an unfettered license to interpret claims to embrace anything remotely related to the claimed invention. Rather, claims should always be read in light of the specification and teachings in the underlying patent. *See Schriber-Schroth Co. v. Cleveland Trust Co.*, 311 U.S. 211, 217, 61 S.Ct. 235, 85 L.Ed. 132 (1940).

(*In re Suitco Surface, Inc.*, No. 2009-1418, 2010 WL 1462294, at *4 (Fed. Cir. 2010).)

Obviousness

“Obviousness is a question of law based on underlying findings of fact.” *In re Kubin*, 561 F.3d 1351, 1355 (Fed. Cir. 2009). The underlying factual inquiries are: (1) the scope and content of the prior art, (2) the differences between the prior art and the claims at issue, (3) the level of ordinary skill in the pertinent art, and (4) secondary considerations of nonobviousness. *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007) (citation omitted).

IV. FINDINGS OF FACT

The following findings of fact (FFs) are supported by a preponderance of the evidence.

Stiles

1. Stiles discloses a dual piloted aircraft control system having two control stations:

The present invention provides a significant improvement over the prior art by providing a wholly new mode of priority sharing between pilot and co-pilot control stations. For small pilot inputs, the pilot and co-pilot are permitted *approximately equivalent control priority to thereby permit transfer of control smoothly*

between stations and to permit an instructor pilot to work with a student pilot through small, uninhibited inputs, and additionally to permit the pilot and co-pilot to tolerate small malfunctions of either controller. As the pilot input increases above a first threshold magnitude however, opposing co-pilot inputs are greatly attenuated. In this situation, the pilot always has authority during a difference in control from the co-pilot so that one of the pilots is always in control of the aircraft. At very large co-pilot inputs, the authority mismatch between the pilot and co-pilot is attenuated so that the co-pilot can mitigate a situation where the pilot input fails in a hard over condition. In this situation, the co-pilot can input a command opposite the failed hard over condition to regain control of the aircraft prior to de-selecting the pilot controller.

(col. 2, l. 57-col. 3, l. 10) (Emphases added).

Tanaka

2. Tanaka discloses a method and system of multiple game controllers to control the game character icons simultaneously:

The exemplary case shown in which FIG. 5, the transceiver 35A on the side of the video game machine 30 establishes radio communication with the transceivers 42a to 42c on three respective controllers 40a to 40c (referred to as a controller group 50A, hereinafter) in a *one-to-three manner*, and the transceiver 35B establishes radio communication with the transceivers 42d and 42e on two respective controllers 40d and 40e (referred to as

a controller group 50B, hereinafter) in a *one-to-two manner*.

The individual controllers 40a to 40e in the third embodiment have display portions 41a to 41e similarly to the foregoing embodiments, on which the controller numbers, *character icons* or so assigned by the video game machine 30 are displayed so as to explicitly be recognized by the players.

([0087]-[0088], Fig. 5) (Emphases added).

V. ANALYSIS

The Appellants have the opportunity on appeal to the Board of Patent Appeals and Interferences (BPAI) to demonstrate error in the Examiner's position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (citing *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

The Examiner sets forth a detailed explanation of a reasoned conclusion of unpatentability in the Examiner's Answer. Therefore, we look to the Appellants' Brief to show error in the proffered reasoned conclusion. *Id.*

Claim Grouping

37 C.F.R. § 41.37(c)(1)(vii) follows in pertinent part.

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection

on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

Grouping of Claims

The Appellants have elected to argue claims 1-20 together as a group (App. Br. 10). Therefore, we select independent claim 11 as the representative claim for this group, and we will address the Appellants' arguments with respect thereto. 37 C.F.R. § 41.37 (c)(1)(vii). *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

35 U.S.C. § 103(a) rejections

We will address Appellants' arguments with respect to independent claim 1. With respect to claim 1, the Appellants contend that the combination of Stiles and Tanaka fails to teach disputed claim limitations because "Tanaka does not teach or suggest that the control inputs from the individual controllers are reduced in any way." (Reply Br. 4). According to the Appellants, the Tanaka reference merely teaches individual control of a single game character (Reply Br. 6). In addition, "Applicants have carefully reviewed the entire disclosure and find no teaching or suggestion of multiple players using multiple controllers to collectively control one game

character.” (Reply Br. 5). The Appellants further contend that Stiles fails to teach a video game controller collectively control at least one on-screen controller (App. Br. 13). The Appellants also contend that “there is no motivation to combine Stiles and Tanaka because neither reference is improved by combining it with the other reference.” (Reply Br. 7).

We disagree with the Appellants’ contentions. We start our analysis with claim construction. We broadly yet reasonably construe the claim limitation “collectively control” as control “relating to or made by a number of individuals taken or acting as a group.”² We find Stiles teaches that a pilot and a co-pilot work together to control an aircraft (FF 1), which reads on the claimed language “collectively control” under our claim construction. We also find Stiles teaches that when the input of one pilot is increased over a threshold, the input of another pilot is decreased (FF 1). Additionally, Figure 2 of Stiles shows the circuitry for summing or combining the signals and reducing the two signals to a single signal. Thus, we conclude that Stiles teaches reducing inputs and collectively controlling. We further find Tanaka teaches that a plurality of game controllers in one or more video game hubs controls on-screen game character icons (FF 2).

The Supreme Court noted that an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged

² See WEBSTER’S II New Riverside University Dictionary (1994 ed.), at 281 (“collective”).

claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S., at 418. The knowledge that collectively controlling an aircraft and simultaneously controlling multiple character icons on the screen by a plurality of game controllers would have been within the skill in the art, as evidenced by Stiles and Tanaka. We, therefore, find that combining the well-known elements of creating a scheme of one or more character icons collectively controlled by a plurality game controller is nothing more than a “predictable use of prior art elements according to their established functions.” *KSR*, 550 U.S., at 417.

Accordingly, we sustain the Examiner’s obviousness rejection of claims 1 and 11. We also sustain the Examiner’s obviousness rejection of its dependent claims 2-10 and 12-20, which have not been separately argued, and fall with their base claims. 37 C.F.R. § 41.37 (c)(1)(vii). *See In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987).

VI. CONCLUSION

Accordingly, based on our consideration of the totality of the record before us, we have weighed the evidence of obviousness found in the combined teachings of the applied references, with Appellant’s countervailing evidence and arguments for nonobviousness and conclude that the claimed invention encompassed by appealed claims 1-20 would have been obvious as a matter of law under 35 U.S.C. § 103(a).

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VII. ORDER

We affirm the obviousness rejections of claims 1-20 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

tkl

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